

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION

**FILED**

**JUN 24 2009**

*[Signature]*  
CLERK

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CLAYTON SHELDON CREEK,

CIV 08-3009

Petitioner,

ORDER

-VS-

DOUGLAS WEBER, Warden, South  
State Penitentiary,

Respondent.

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The petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, attacking petitioner's 2000 rape conviction, was denied both as a second and successive habeas petition and on the merits. Petitioner appealed. I denied petitioner's application for a certificate of appealability, as did the United States Court of Appeals for the Eighth Circuit. The Eighth Circuit dismissed the appeal on October 27, 2008.

Petitioner has filed a motion for a certificate of probable cause to appeal. Petitioner's appeal was dismissed. He had no appeal as of right from a district court order denying a petition for a writ of habeas corpus. 28 U.S.C. § 2253(b). Upon the filing of the final judgment of the United States Court of Appeals for the Eighth Circuit denying his request for a certificate of appealability and dismissing his appeal, the petitioner's only avenue of relief was to file a petition for a writ of certiorari in the United States Supreme Court.

Now, therefore,

IT IS ORDERED that the motion for a certificate of probable cause to appeal is denied.

Dated this 23<sup>rd</sup> day of June, 2008.

BY THE COURT:

*[Signature: Charles B. Kornmann]*

CHARLES B. KORNMAN

United States District Judge

ATTEST:

JOSEPH HAAS, Clerk

BY

*[Signature: Janette Morris]*

DEPUTY

(SEAL)